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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| TERRI SMITH and MICHELE SMITH FREGOSO,<br><br>Plaintiff,<br><br>v.<br><br>STONEBRIDGE LIFE INSURANCE COMPANY,<br><br>Defendant. | Case No. C:08-01466 (JCS)<br><br>PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT<br><br>U.S. Magistrate Judge Joseph C. Spero<br><br>DATE: September 26, 2008<br>TIME: 9:30 a.m.<br>CTRM: A |

# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**CASES** **Page**

**STATUTES** **Page**

## I.

## CALIFORNIA INSURANCE CODE § 10369.12 APPLIES TO STONEBRIDGE'S ACCIDENTAL DEATH POLICY.

STONEBRIDGE argues that California Insurance Code § 10369.12 does not apply to its policy because Article V of Chapter 4 of the California Insurance Code, within which said section is found, applies only to group disability policies; that STONEBRIDGE'S policy form was approved by the California Insurance Commissioner; and, that the drug exclusion language found in STONEBRIDGE'S policy is not "less favorable" to the insured than that allowed by the statute.

### A. THE APPLICATION OF § 10369.12 IS NOT LIMITED TO GROUP INSURANCE.

STONEBRIDGE asserts that Insurance Code § 10369.12 does not apply to individual insurance. It points to § 10270, entitled *Application of Chapter* in asserting that the chapter applies only to "group disability insurance." STONEBRIDGE'S reliance on § 10270 for its assertion is unfounded. Section (a) of § 10270 indicates that "this chapter shall not apply to workman's compensation insurance..." nor other delineated liability insurance. Section (b) indicates that "this chapter shall apply to selected group disability insurance..." except as they are exempted under § 1040.1. Nothing in § 10270 indicates that the chapter does not apply to individual disability policies or that it applies only to group disability policies.

Throughout the chapter there are various requirements and references for individual policies and for group policies. If the chapter applied only to group policies there would not be reference to individual policy requirements. As an example, § 10277 is entitled, *Dependency of Child over Limiting Age in Group Policy*. § 10278 is entitled, *Dependency of Child over Limiting Age in Individual Policy*. There are some provisions that apply only to group policies such as § 10273.4 regarding the renewal of group policies and others apply only to individual policies such as § 10273.6 regarding the eligibility for renewal of individual policies. Other

provisions do not differentiate between group and individual policies. The provisions referenced by plaintiffs beginning at § 10369.1, entitled *Application of Article* are of this character. Said section specifically states:

> No disability policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in sections 10369.2 to 10369.12, inclusive, unless such provisions are in the words in which the same appear in such sections...." (emphasis added).

These provisions apply both to group and individual policies. To assume that the Legislature meant otherwise is to read limitations within the statutory language that they do not contain.

Defendant's assertion that Chapter 4 of the California Insurance Code, entitled *Standard Provisions in Disability Policies* applies only to group policies has no foundation. To assert so would leave individual policies virtually unregulated. Clearly, that is not the case or intent of the Legislature. In fact California courts have applied the relevant sections to individual policies. (Olson v. American Bankers Insurance Co., 30 Cal.App.4th 816 (1994); Twohey v. Lincoln National Life Insurance Co., 273 F.3d 817 (9th Cir. 2001) wherein the court held that California Insurance Code § 10369.6 applies only to individual policies and not to group policies).

**B. § 10369.12 APPLIES TO THE POLICY REGARDLESS OF WHETHER THE COMMISSIONER APPROVED THE POLICY FORM.**

California Insurance Code § 10369.1 provides as follows:

> ... no disability policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in sections 10369.2 to 10369.12, inclusive, unless such provisions are in the words in which the same appear in such sections; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner, which is not less favorable in any respect to the insured or the beneficiary. (emphasis added).

Every policy of disability insurance must be filed and approved by the insurance commissioner (California Insurance Code § 10290). The fact that the form of the policy has been

approved by the Insurance Commissioner's office does not allow an insurance company to enforce a provision which is contrary to California statute. The statute clearly states this fact when it provides a two-step process for the use of language not identical to that set forth in the statute. The first step is to be approved by the Commissioner and the second step is that the language must not be "less favorable in any respect to the insured or the beneficiary." The California courts have acknowledged these dual requirements for an insurer to use language other than as set forth in the statute. (Olson v. American Bankers Insurance Co., 30 Cal.App.4th 816, 827-828 (1994))[1]. Thus, assuming the Insurance Commissioner did approve the form the true question is whether the language in the policy is less favorable than that required by statute.

### C. THE POLICY DRUG EXCLUSION IS LESS FAVORABLE THAN THAT ALLOWED BY STATUTE.

California Insurance Code § 10369.12 allows an insurer to exclude loss sustained as a consequence of the insured being under the influence of a controlled substance "*unless administered on the advice of a physician*." The STONEBRIDGE policy excluded loss resulting from the taking of a drug "*unless taken or used as prescribed by a physician.*" The statutory language "*unless administered on the advice of a physician*" and the policy language "*as prescribed by a physician*" have been interpreted by the courts as having differing meanings. The courts that have looked at both phraseologies have held that the policy language is more restrictive than that allowed by statute in that it excludes a loss caused by an overdose of drugs prescribed by a physician if the medication was not used exactly as prescribed by the physician. Whereas the statutory language "*administered on the advice of a physician*" would not exclude a loss caused by the use of prescription medication whether it was taken exactly as prescribed or not. It has been said that the limitation is intended to exclude losses caused only by the illicit use

[1] See Holloway v. J.C. Penney Life Insurance Co. 190 F.3d 838 (7th Cir. 1999) in which Stonebridge's predecessor unsuccessfully made the same argument that the commissioner's approval of the policy form allows enforcement of exclusions that do not conform to statute.

of intoxicants. (Hummel v. Continental Casualty Insurance Co. 254 F.Supp.2d 1183, 1189 (D.Nev. 2003); Legare v. Canada Life Assurance Co. Southern District of California Case Number 02 CV 0798, Stennett Declaration Exhibit 3).

Defendant cites an unpublished opinion from the Sixth Circuit applying Ohio law. (Dice v. General Electric Capital Assurance Co. 93 F. Apx. 68 (6th Cir. 2004)). Though the court's order in Dice concluded that a loss caused by the taking of drugs "*unless administered on the advice of a physician*" would exclude a loss caused by the taking of medication in excess of the amount specifically prescribed, the court in issuing its order clearly did not anticipate that its opinion would be cited as precedent. This is clear from the fact that the order is a very cursory one-page opinion that provides very little analysis. Furthermore, the finding it made was dicta in that the insured's death was caused by "acute multiple drug intoxication" that included Oxycodone and Cocaine. Since death was caused by a combination of Oxycodone and Cocaine and since Cocaine is not a prescribed drug, then clearly the death would have been excluded by the drug exclusion. Thus, it was not necessary for the court to discuss whether decedent's taking of more than the prescribed amount of Oxycodone fell within the exclusion. In contrast, the court in Hummel v. Continental Casualty Insurance Co., supra, beginning on page 1189 goes to an in depth analysis of the legislative purpose behind the Nevada statute which is identical to California Insurance Code § 10369.12 and then concludes:

> In light of the policy behind the statute, and the possibilities relating to the definition of "administered on the advice of," the Court finds that the Plaintiff's interpretation of 'administered on the advice of' parallels what the Legislature intended in enacting the statute. 'Taken as prescribed by' is a much stricter standard than 'administered on the advice of;' it requires exact adherence to the instructed dosages, whereas 'administered on the advice of' does not. This interpretation of the clause 'administered on the advice of' is more in line with the policy behind the statute, namely, protecting insureds. Nor does it achieve the absurd results that Continental asserts, specifically, that Nevada's insurance law would allow an insured to take unlimited quantities of prescribed medications and still be afforded coverage under the policy as insurance companies are not without means to protec themselves from risks arising from intentional overdoses. Moreover, contrary to Continental's position, it is the clause 'taken as prescribed by' that could very well lead to absurd results. For instance, if Erica had taken three Oxycodone pills in one day as opposed to two, and

> suffered some unforseen negative reaction resulting from the additional medication, which in turn resulted in injury or loss, Continental would be free to deny her coverage based on her failure to adhere strictly to her physicians instructions. Continental's ability to deny coverage under such circumstances would thwart the public policy of protecting insureds against overreaching insurance companies and lead to truly absurd results.
>
> It is more reasonable to assume that the purpose of the statute's language was to prevent the exclusion from applying in cases where the consumption of the drug or narcotic was itself an illegal act. Accordingly, the Court finds the reasonable and appropriate construction of the term 'administered on the advice of' to include Erica's situation where her physician gave her a prescription of Oxycodone to relieve her migraines. Ibid page 1190.

## II.

## THE POLICY'S MEDICAL TREATMENT CLAUSE DOES NOT EXCLUDE PLAINTIFFS' LOSS

### A. MEDICAL TREATMENT WAS NOT THE EFFICIENT PROXIMATE CAUSE OF DECEDENT'S DEATH.

Where there are multiple factors contributing to the cause of loss the modern test is to determine whether the "efficient proximate cause" of the loss was covered under the policy. (Garvey v. State Farm Fire & Cas. Co. 48 Cal.3d 395, 412 (1989)). Most accidental death policy exclusions are written so that death is excluded if "contributed to by" disease or treatment thereof. Despite this language, the modern California courts uniformly disregard such limiting language in policies as contrary to California public policy and apply the efficient proximate cause analysis. (Bornstein v. J.C. Penney Life Insurance Co. 946 F.Supp. 814, 819 (C.D. Cal. 1996); Arata v. California Western States Life Insurance Co. 50 Cal.App.3d 821, 825 (1975) - hemophiliac died of uncontrollable bleeding following accident; accidental death benefits payable despite policy provision excluding deaths "contributed to by ... disease or bodily or mental infirmity.")

It is important to note the above modern California approach to applying insurance exclusions when looking at the authority cited by defendant. Defendant's page and a half

discussion of the medical treatment exclusion (page 8-9 of defendant's points and authorities) cites five cases. None of the cases apply California law; the cases were all decided between 1877 and 1950; each of the cases dealt with accidental means policies rather than accidental death policies; and each of the policies excluded death caused by disease or treatment thereof even if the disease or treatment was only a "partial" or "contributing" cause. (Wilson v. Businessmen's Assur. Co. of America 181 F.2d 88, 89 (9th Cir. 1950) - applying Idaho law excluded death "caused wholly or partly, the results of which are contributed to by bodily or mental infirmity, hernia or any medical or surgical treatment therefor;" Barkerding v. Aetna Life Insurance Co. 82 F.2d 358 (5th Cir. 1936) - excluded death "caused directly or indirectly, wholly or partly, by bacterial infections;" Bayless v. Travelers Insurance Co. 2 F.Cas. 1077 (E.D.N.Y. 1877) - excluding death "caused wholly or in part by any surgical operation or medical or mechanical treatment for disease;" New Amsterdam Casualty Company of Perryman 162 Miss. 864 (1932) - excluded disability "caused directly or indirectly by a medical or surgical treatment.") (Emphasis added).

Contrasting authority cited by defendant are those cited by plaintiffs in their points and authorities in support of partial summary judgment beginning on page 10. Each of the cases cited by plaintiffs are current (post 1996), apply California law and deal with accidental death as opposed to accidental means policies.

Ms. Hall-Hussain's death was not caused by her medical treatment. Rather, her death was caused by the accidental toxic overdose of medication which caused an injury to her system and subsequent death. In this case there is an independent act similar to the medical malpractice cited by the court in Heighley v. J.C. Penney Life Insurance Co. 257 F.Supp.2d 1241 (C.D.Cal 2003). In this case, that independent act was the unintended toxic overdose that directly resulted in death.

**B. THE MEDICAL TREATMENT EXCLUSION AS APPLIED BY STONEBRIDGE IS VIOLATIVE OF THE CALIFORNIA INSURANCE CODE.**

The final differentiation between the cases cited by defendant and the cases cited by plaintiffs on this issue is that none of the cases cited by defendant dealt with a statutory limitation on exclusions that may be included within a policy. California Insurance Code § 10369.1 specifically states that no disability policy

> "shall contain provisions respecting the matters set forth in sections 10369.2 to 10369.12, inclusive, unless such provisions are in the words in which the same appear in such sections; provided, however, that the insurer may ...[use other language]... which is not less favorable in any respect to the insured." (Emphasis added).

As previously stated, the State Legislature has addressed in § 10369.12 the maximum extent an insurer can limit coverage for accidental loss caused by the use of intoxicants. Coverage for accidental losses caused by the use of prescribed medication cannot be limited. The California Legislature in enacting § 10369.12 anticipated accidental death being caused by prescribed medication and has precluded limiting such loss.

STONEBRIDGE'S effort to interpret its "disease and treatment thereof" exclusion to exclude accidental death caused by use of prescribed medication is violative of §§ 10369.1 and 10369.12.

**C. HOW MUCH OXYCODONE WAS TAKEN BY MS. HALL-HUSSAIN?**

STONEBRIDGE, in its points and authorities argues that it is undisputed that Ms. Hall-Hussain took "nearly double the prescribed amount" of Oxycodone. (STONEBRIDGE'S Points and Authorities, page 6). This conclusion was based on defendant's simple arithmetic based on the number of pills found by the Coroner with the prescription bottle dated March 27, 2007. However, defendant's assertion is inconsistent with the facts set forth in the Declaration of Michele Smith Fregoso and STONEBRIDGE'S own toxicologist report.

Ms. Hall-Hussain's daughter, MICHELE SMITH FREGOSO, stated that after her

mother's death she obtained her mother's handbag with her pill organizer that contained her medication for one week. She also indicated that her mother had a habit of keeping medications in various areas of her apartment. Thus, a simple counting of the number of pills remaining in the bottle is not an accurate methodology for determining how many pills had been taken by Ms. Hall-Hussain from the March 27, 2007 prescription bottle.

STONEBRIDGE during its initial investigation of the claim retained the services of a forensic toxicologist Gary H. Wimbish, Ph.D. He submitted a report to STONEBRIDGE dated June 7, 2007. In his report he stated:

> With current therapy at 40 mg. [1 pill] per dose every 8 hours, the blood concentration would be expected to plateau at about 0.06 mg/L. (Casino Declaration, Exhibit 2, pg 2).

As STONEBRIDGE acknowledges, Dr. Chen increased Ms. Hall-Hussain's dosage on April 3, 2007 (five days before her death) to three 40 mg pills every 8 hours. (UF No. 16). Thus, Gary Wimbish's figure should be multiplied by a factor of three which would have given Ms. Hall-Hussain an "expected plateau" at about .18 mg/L. This is slightly less than the 0.25 mg/L blood concentration of Oxycodone found in Ms. Hall-Hussain's blood following her death, not "nearly double the prescribed amount" asserted by defendant.

The above values are mere estimates since there are numerous elements that may affect the blood concentration values. In fact Dr. Chen testified that it may be that Ms. Hall-Hussain did not take more than what was prescribed. Dr. Chen testified that her higher level of blood concentration could be attributable to an inability to metabolize and eliminate the higher dosage of Oxycodone, resulting in a build up in her blood above the expected values. (Casino Declaration Exhibit 1, pg 55:1-12).

## III.

## CONCLUSION

Defendant has failed to establish the applicability of the two exclusions upon which it relied to deny coverage. Additionally, both the drug exclusion and the medical treatment

exclusion, as defendant interprets their application to this case, are violative of the California Insurance Code.

Respectfully submitted

STENNETT/CASINO
Attorneys for Plaintiffs

By /s/ *John P. Stennett*
JOHN P. STENNETT

**SMITH v. STONEBRIDGE LIFE INSURANCE COMPANY**

U.S. DISTRICT COURT
CIVIL ACTION NO. C 08-01466 JCS

**DECLARATION OF SERVICE BY ELECTRONIC FILING**

I, the undersigned declare:

That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, State of California, at the law offices of Stennett & Stennett in which county the within mentioned mailing occurred. My business address is 501 W. Broadway, Suite 1340, San Diego, CA 92101.

On August 29, 2008, I served the following documents: PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT; DECLARATION OF BARBARA A. CASINO IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

on the following named person by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

MANATT, PHELPS & PHILLIPS
MARGARET LEVY
JOSEPH E. LASKA
11355 West Olympic Boulevard
Los Angeles, CA 90064
(mlevy@manatt.com; jlaska@manatt.com)
Attorneys for Defendants

BY ELECTRONIC FILING & SERVICE VIA CM/ECF: I transmitted a true copy of the above-entitled document to CM/ECF on August 29, 2008. I caused all of the above-entitled documents to be sent to the recipients noted via CM/ECF Filing Receipt page will be maintained with the original documents in our office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 29, 2008, at San Diego, California.

/s/ *JOHN P. STENNETT*
JOHN P. STENNETT
sc@stennettcasino.com

John P. Stennett, SBN: 72815
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| TERRI SMITH and MICHELE SMITH FREGOSO,<br><br>Plaintiffs,<br><br>v.<br><br>STONEBRIDGE LIFE INSURANCE COMPANY,<br><br>Defendant. | Case No. C:08-01466 (JCS)<br><br>DECLARATION OF BARBARA A. CASINO IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT<br><br>U.S. Magistrate Judge Joseph C. Spero<br><br>DATE: September 26, 2008<br>TIME: 9:30 a.m.<br>CTRM: A |

I, BARBARA A. CASINO declare as follows:

1. I am an attorney licensed to practice before the courts of the State of California and this Court. I am the attorney of record for plaintiffs in the within action. I have personal knowledge of the facts set forth in this declaration except those matters stated on information and belief which I believe to be true. If called as a witness I can and will testify competently to all those facts.

2. Attached as **EXHIBIT 1** are true and correct copies of excerpts from the Deposition Transcript of Chia Chen, M.D. taken April 11, 2008.

3. Attached as **EXHIBIT 2** is a true and correct copy of a June 7, 2007 report of Gary H. Wimbish, Ph.D. addressed to Stonebridge Life Insurance Co. The report was contained in Stonebridge Life Insurance Company's claim file.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on August 29, 2008

Barbara A. Casino

BARBARA A. CASINO

# EXHIBIT 1

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CASE NO. C 08-01466 JCS

. . .

TERRI SMITH and MICHELLE SMITH FREGOSO,

Plaintiffs,

vs.

STONEBRIDGE LIFE INSURANCE COMPANY,

Defendants.
_____/

# D E P O S I T I O N

# O F

# CHIA CHEN, M.D.

. . .

FRIDAY, APRIL 11, 2008

. . .

8:15 A.M.

. . .

VALERIE WALKER, CSR #7209

**CRNICH DEPOSITIONS**
626 H STREET, EUREKA, CA. 95501
TELEPHONE 707 443-4879
FAX 707 443 4870
CONFERENCE ROOMS

that conversation that you had recently increased her dosage on her OxyContin?

A. I very well may have because I would have the notes in front of me, so chances are I would have given him some information from my notes, and that may very well include an increased dose.

Q. You testified that your initial thought was that maybe she overdosed on her OxyContin?

A. She could, yeah.

Q. Did you have any reason to believe that she might have done that? What was it that made you wonder -- that made you identify that as a possible reason for her death?

A. It would be -- it would have been a possible reason for any patient that's on pain medication, this type of pain medication. That's one of the things we always have to think about, if they pass away and they're on narcotic pain medication. So it's not specific to her; it's specific to her type of patient, that she's a pain patient, she's on pain medication. She's been prescribed pain medication. So that would be why I would think about that.

Q. And when you say that you thought that perhaps she had overdosed, by that you mean had taken more medication than you had prescribed for her?

A. Yes. Overdose could mean that she had taken more than prescribed, or that the more amount -- her body cannot handle the increased amount due to a change in some other condition. For instance, your medication is normally metabolized by all your body organs. So if there was some change in your medical status that you couldn't metabolize the medication, even if you're taking the prescribed amount, you may not be excreting them as you normally would. Then they could build up in your system. And that is an overdose too because that means that there's more of that in your system than your system can handle. So that could be considered as well.

Q. During your telephone call with the coroner, did he provide you with any information as to the number of pills that he believed Ms. Hall-Hussain had taken in the days leading up to her death?

A. If he did, I didn't write it down. I don't know if he did or not.

Q. Do you have any record of your conversation with the coroner, other than this note here that you called him?

A. No. Does the coroner have a record? Maybe they --

Q. They do. And actually, that was going to be my next question.

# EXHIBIT 2

FORENSIC TOXICOLOGY CONSULTANTS, INC.
Gary H. Wimbish Ph.D., DABFT
Diplomate American Board of Forensic Toxicology

June 7, 2007

Ms. Judy Lovelady, ALHC
STONEBRIDGE LIFE INSURANCE CO.
2700 W. Plano Pkwy
Plano, TX 75075-6367

Re: Insured: Diane G. Hall-Hussain
Claim #: B-651853

Dear Ms. Lovelady:

I received via facsimile transmission on June 4, 2007, copies of the Proof of Accidental Death-Affidavit of Claimant, Certificate of Death, County Humbolt, Eureka, California, records from Lima's Professional Pharmacy, Eureka, California, Coroner's Death Investigation Report, Central Valley Toxicology Report, Claim Progress Sheet, Redwood Family Practice records and medical records from Chia Chen, M.D. and John Gambin, M.D. concerning Ms. Hussain.

Review of these records reveals that on April 9, 2007 at about 11:15 hours, Ms. Hussain was found by her brother in a sitting position by her bed. The Coroner's office was called and she was pronounced dead shortly thereafter. Roy Horton, Deputy Coroner, drew blood from the deceased at the Coroner's office. The blood was sent to Central Valley Toxicology for a complete drug screen. The results are shown below:

| SAMPLE | RESULT |
|---|---|
| Blood: | |
| Amitriptyline | 0.27 mg/L |
| Nortriptyline (metabolite of amitriptyline) | 0.08 mg/L |
| Oxycodone | 0.25 mg/L |
| Oxymorphone (metabolite of oxycodone) | 0.05 mg/L |
| Temazepam | 0.05 mg/L |
| Metoclopramide | 0.02 mg/L |
| Trimethoprim | 0.16 mg/L |

Amitriptyline is a tricyclic antidepressant available in doses from 10 to 150 mg. It is metabolized to nortriptyline. The concentration of amitriptyline and nortriptyline of 0.27 and 0.08 mg/L respectively are in the expected therapeutic range.

Oxycodone is a narcotic analgesic used for the treatment of chronic pain. Ms. Hussain received 40 mg of oxycodone, a sustained release formulation of oxycodone from Dr. Chen. Dr. Chen had recently increased her dose to one 40 mg tablet every 8 hours (3x/day) rather than the recommended every 12 hours because the previous amount was no longer effective. A single dose of 40 mg oxycontin will produce a peak blood value of about 0.039 mg/L. (1) With current therapy at 40 mg per dose every 8 hours, the blood concentration would be expected to plateau at about 0.06 mg/L. The blood value for oxycodone found at autopsy was 0.25 mg/L. Post mortem blood concentrations associated with death range from 0.4 to 2.7 mg/L. (2) Death has been associated with blood values as low as 0.1 mg/L, but only if the subject is naïve to the effects of oxycodone and/or other CNS depressant drugs are present. (3)

Temazepam is a hypnotic drug intended for oral administration on a once-nightly bases. Ms. Hussain was prescribed 30 mg to be taken nightly. Peak blood concentration achieved at about 1.4 hours after ingestion averaged 0.08 mg/L. (4) The value found in Ms. Hussain's blood at 0.05 mg/L is considered sub-therapeutic.

Metoclopramide and trimethoprim are not centrally acting drugs and most likely did not contribute to the cause of death.

Therefore, it cannot be said with any degree of scientific certainty that Ms. Hussain's death was directly related to an overdose of oxycontin. However, the blood concentration of oxycontin is not consistent with the prescribed dosage regiment. I must defer the cause of death to the Coroner of Humbolt County.

Thank you for the opportunity to be of service.

Yours sincerely,

Gary H. Wimbish, Ph.D., DABFT

GHW:jp
Attachment